1 2 3	FEDERAL ELECTION COMMISSION 999 E Street, N.W. Washington, D.C. 20463						
5	5 FIRST GENERAL COUNSEL'S REPORT						
6 7 8 9 10		MUR: 6334 DATE COMPLAINT FILED: 07/2/2010 DATE OF NOTIFICATION: 07/2/2010 RESPONSE RECEIVED: 09/15/2010 DATE ACTIVATED: 10/20/2010					
12 13 14 15		EXPIRATION OF SOL:01/01/2010 earliest/ 09/15/2015 (ongoing)					
16 17 18 19	COMPLAINANTS:	NGP Software, Inc. Stuart Trevelyan, President					
20 21	RESPONDENT:	Aristotle International, Inc.					
22 23 24	RELEVANT STATUTES AND REGULATIONS:	2 U.S.C. § 438(a)(4) 11 C.F.R. § 104.15					
25 26 27	INTERNAL REPORTS CHECKED:	None					
28 29	FEDERAL AGENCIES CHECKED:	None					
30	I. <u>INTRODUCTION</u>						
31	This matter involves a complaint b	by NGP Software, Inc. against its competitor, Aristotle					
32	International, Inc. ("Aristotle"), alleging t	that Aristotle's software application "Relationship					
33	Viewer" violates section 438(a)(4) of the	Federal Election Campaign Act of 1971, as amended					
34	(the "Act"). Specifically, the complaint alleges that Aristotle's use of FEC data violates section						
35	438(a)(4), also known as the "sale and use" provision of the Act, because Aristotle has marketed						
36	the Relationship Viewer as a program des	signed to encourage campaigns to solicit contributions					
37	from individuals, and the Relationship Vi	iewer's search function yields names of individuals and					

other information that is drawn from FEC reports.

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Aristotle's response to the complaint maintains that the Relationship Viewer does not use

2 FEC data to create lists of solicitation targets in violation of the Act, nor is FEC data able to be

exported or downloaded through the Relationship Viewer. Response at 28, 31. Additionally,

Aristotle claims that the Relationship Viewer application was not the main focus of its

advertisement for its comprehensive 360 software program. Response at 27. Rather, Aristotle

6 uses the Relationship Viewer as a "technological advancement" to "grab people's attention and

direct[] them to Aristotle's sales staff." Response at 28. Finally, Aristotle states that the

8 Relationship Viewer has a legitimate purpose in downloading FEC data because that information

can be used for compliance and vetting purposes. Response at 32.

Based on available information discussed below, we recommend that the Commission find reason to believe that Aristotle International, Inc. violated 2 U.S.C. § 438(a)(4). Further, we recommend that the Commission authorize the use of compulsory process in this matter in order to conduct a limited investigation using both formal and informal methods.

II. FACTUAL AND LEGAL ANALYSIS

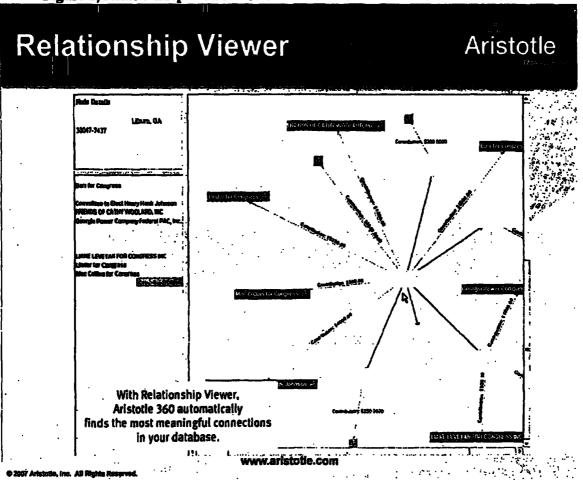
A. Factual Background

Aristotle introduced the Relationship Viewer application as part of its larger Aristotle 360 software program in 2005. Response at 6. As described in Aristotle's response, the 360 program's "main purpose . . . is to allow political committees to efficiently and accurately manage and account for contributions and disbursements to permit committees to file federal and state compliant financial disclosure reports and to manage their data." Response, Declaration of Dean A. Phillips ¶ 14. In addition, the 360 program includes numerous other functions, some of which include the ability to: perform compliance/vetting of contributions and contributors; check contribution and disbursement limits; create contribution history summaries, that are

- displayed in the individuals' full detailed record, including contributions by year or election
- 2 cycle; and use a Relationship Viewer. See Response, Declaration of Dean A. Phillips ¶16.
- As one aspect of the larger Aristotle 360 program, the Relationship Viewer can be used
- 4 "to uncover relationships between someone in [a political committee's] own database, through
- 5 the voter file, state campaign reports and the Commission's files." Response at 14. The
- 6 Relationship Viewer essentially acts as a search tool. The political committee can input the
- 7 name of an individual. The user would then receive search results of other individuals with
- 8 whom the original individual has "relationships." Response at 15. Importantly, the user must
- 9 first have the individual's name. Response at 14.
- The search results are displayed both graphically and in list form. Once the user
- "searches" for a name, the Relationship Viewer produces a graphical display with the person
- searched for appearing at the center of a diagram. For example, in the "connection map" shown
- below in Figure 1, "branches" stem from the original individual to other individuals with whom
- the original individual has a relationship, as determined by the Relationship Viewer. See
- 15 Complaint, Attachments Aristotle 360 Relationship Viewer Demo Screenshots (hereinafter
- "Relationship Viewer Screenshof"); see also Data-centric Grassroots Organizing, displayed
- 17 below as Figure 1.

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Figure 1, Relationship Viewer Power Point Slide



- As described by Aristotle, the Relationship Viewer's default settings display one "degree
- 4 of separation" for search results. Response at 15. This means that the program will display the
- 5 relationships of the individual scarched for, and will also display the relationships for any
- 6 individual as part of the "connection map." Id. "The [first] degree of separation results include:
- 7 the identifying information about the first person, names of the individuals personally or
- 8 professionally linked to the first person or with addresses in the vicinity of the first person, and
- 9 committees who received contributions from any of the above, none of whose names came from
- 10 the FEC database." (Emphasis in original.) Id.

names.

The Relationship Viewer's search results also contain contribution histories of both the 1 individual searched for and the individuals displayed as search results. See Complaint, 2 Relationship Viewer Screenshot. For example, in the "connection map" displayed in Figure 1 3 above, the Relationship Viewer shows the contribution history of the person searched for, in this 4 . Through the use of its "connection map," the Relationship Viewer 5 case made contributions to six different committees (both federal and 6 shows that state). 7 The "connection map" also displays the contributions of individuals with a connection or 8 These connections can include "names of individuals personally 9 relationship to or professionally linked to the first person or with addresses in the vicinity of the first person, 10 and committees who received contributions from any of the above." Response, Declaration of 11 Dean A. Phillips ¶ 21.b. As shown in Figure 1 above, the Relationship Viewer displays a 12 and an individual named . Additionally, the 13 connection between Relationship Viewer shows a further connection between and a federal political 14 committee, in this case a contribution to Liane Levetan for Congress. The Relationship Viewer 15 appears to display both the contribution history of the individual searched for, and the 16 contribution history of individuals displayed as a result of the search. 17 In addition to the "connection map," Relationship Viewer also displays a list of the 18 individual's "relationships" on the left-hand side of the screen. This list appears to include both 19 individuals and committees, including the original individual that was searched for. This list also 20 apparently highlights the name of the individual subject to the search. It is not obvious from the 21 screenshot whether this list contains any interactive features, such as the ability to highlight other 22

1	Some of Relationship Viewer's functions are immediately apparent from the web-based					
2	demonstration (i.e. the "relationship map" and contribution histories), and Aristotle has					
3	explained, in general terms, where it obtains the information that forms the database behind the					
4	Relationship Viewer. For example, Aristotle has stated: "The 360 Relationship Viewer does no					
5	obtain the identity of individuals from the FEC files" Response at 4. Aristotle further					
6	explains that "the 360 Relationship Viewer only searches the FEC files for contribution					
7	information for individuals already in the committee's databases; i.e., the 360 Relationship					
8	Viewer does not extract the names of individuals from the FEC files." Response at 14. Rather					
9	than use a contributor's name, address, employment, and other information available through					
0	FEC reports, Aristotle states "the Viewer [operates] through the voter file, state campaign report					
1	and the Commission's files." Id.					
2	The complaint identifies three different ways that Aristotle has marketed its 360 software					
3	program. First, Aristotle has marketed the software through a web-based demonstration that					
4	contains text on each frame that states:					
5 6 7 8 9	It's not science fiction. It's data mining taken to the next level. Our powerful web-based system quickly uncovers relationships that can be targeted for votes, dollars, or grass-roots support. Imagine the possibilities. Use it to access Fat Cats, elected officials, corporate board members, or ordinary voters. It's just one of the ways Aristotle gives you a much-needed edge, via our innovative software, accurate databases and seasoned staff. But don't take our word for it, take the Aristotle challenge.					
1 2	(Emphasis added.) Complaint, Relationship Viewer Screenshot. In addition, the demonstration					
23	features a narrative that appears in the bottom-left corner in each frame. The narrative states, in					
4	successive frames:					

With Relationship Viewer, Aristotle 360 automatically finds the most meaningful connections in your database – In the interactive connection map, you can determine the links between your supporters . . . – and their co-workers . . . – their neighbors . . . – and more. – The Relationship Viewer allows you to build your connection map with up to six degrees of separation. – You can use the record listing to automatically drill-down on the individual organization of your interest – You can also export your connection map to many different standard formats for customized use.

Id.

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Second, Aristotle issued a press release announcing its application to patent its political data mining technology. In the release, Aristotle referred to its 360 software "as the most powerful political data mining tool and campaign software." Sae Complaint, Press Release:

Aristotle Files Patent on Political Data Mining Technology; Boosts Compliance and

Fundraising (Feb. 25, 2010) (hereinafter "Aristotle Press Release"). The press release describes several ways in which the Aristotle 360 software uses the new technology, including enabling "users to access, mine and harness contribution disclosure records in a manner consistent with the law and for compliance purposes." Id. The press release further states: "Aristotle's platform incorporates detailed state contributor and voter lists with highly accurate consumer databases to illuminate exactly how much a donor has given, how much they can give, and to suggest the maximum they might agree to contribute where allowed by law." Id. Finally, the relevant portion of the press release states:

While Aristotle's technology delivers aignificant advantage in terms of solicitation, the software was designed to allow campaigns to comply with Federal Election Commission restrictions and state laws impacting campaigns and contributor databases. Breakthrough features show a supporter's employer and occupation, as well as age and family member names, if the information is not already known.

Id. In its response, Aristotle further explains the functions of its 360 software described in the press release, explaining "There is no increased fee for inclusion or per record usage of such

- data, and Aristotle's FEC contributor data look-up feature also is available at no charge on
- 2 Aristotle's website at <u>www.Aristotle.com</u>." Response at 13.
- Finally, Aristotle ran a print advertisement in Politics Magazine. See Complaint, Politics
- 4 Magazine Ad (March 10, 2010). The advertisement states: "The only other way to raise as much
- 5 money could land you in jail." Id. It also features a series of mug shots, and lists a number of
- 6 Aristotle's products on the right-hand side, including a "Relationship Finder." Id. The
 - advertisement also includes the statement:

Only Aristotle can provide the data needed to point the way to the thousands of donors predisposed to contributing to your campaign, PAC or grassroots group. Our powerful web-based system tells you everything you need to know about a prospect or contributor. It makes the names, addresses, phone numbers and family member names of millions of contributors to state campaigns instantly available. It not only tells you which permissible donors are giving to like-minded causes, it can tell you if a person is close to maxing out, the correct amount to ask for and the name of their spouse and their birthday. You'll learn if they give passionately to religious, environmental, child welfare, gun owner, property rights, antiwar, civil rights, Democratic or Republican causes.

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- Id. (Emphasis in original.) Further, the advertisement also states: "While raising more money,
- 19 you can have the peace of mind knowing that only Aristotle guarantees your donations are
- 20 processed are reported in a manner that is 100% FEC and state compliant. To learn more visit
- 21 http://www.fec.gov/pdf/record/2004/oct04.pdf and to go AO 2004-24 "Use of Contributor
- 22 Information" or go to www.aristotle.com/FECdecision." Id.

B. Analysis

In relevant part, 2 U.S.C. § 438(a)(4) provides that the Commission shall provide reports and statements filed with it to the public, "except that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee." In addition, Commission regulations prohibit the use

- of data from reports "for the purpose of soliciting contributions or for any commercial purpose."
- 2 11 C.F.R. § 104.15(a). However, the regulations provide for an exception from the prohibition
- against using FEC data and allows the use of such data in "newspapers, magazines, books or
- 4 other similar communications . . . as long as the principal purpose of such communications is not
- 5 to communicate any contributor information listed on such reports for the purpose of soliciting
- 6 contributions or for other commercial purposes." 11 C.F.R. § 104.15(c).

7 Like the text of the statute and the regulation, the legislative history also focuses on

- 8 preventing both the specific act of soliciting contributions and the general use of FEC data for
- 9 commercial purposes. An amendment to what would later be enacted as the Federal Election
- Campaign Act of 1971 introduced the "sale and use" provision of the Act, 2 U.S.C. § 438(a)(4).
- During debate of this amendment on the Senate floor, the amendment's sponsor, Senator
- 12 Bellmon, indicated several times that "the matter of selling lists and list brokering" was the
- amendment's prime focus. 117 Cong. Rec. 20,057-58 (daily ed. Aug. 5, 1971 reprinted in
- Legislative Hisotry of the Federal Election Campaign Act of 1971 at 581). Senator Bellmon also
- addressed the amendment's more general purpose: "to protect the privacy of the generally very
- public-spirited citizens who make a contribution to a political campaign or a political party" and
- to prevent "open[ing] up the citizens who are generous and public spirited enough to support our
- political activities to all kinds of harassment." Id.
- The Commission has addressed the statute and regulations' application to the use of FEC
- 20 data in software programs that may be used in soliciting contributions. In Advisory Opinion
- 21 2004-24, NGP Software asked whether its inclusion of "information about contributions that the
- 22 client's donors may have made to other candidates, PACs, and party organizations" would
- violate 2 U.S.C. § 438(a)(4). Advisory Opinion 2004-24 (NGP), Request at 1. In concluding

- that the use of such information would be prohibited under the Act, the Commission explained
- 2 that "[t]he inclusion of such information in [the software], whether sold as a separate service or
- as part of a client's purchase of the [software] upgrade, would be a prohibited use of contributor
- 4 information obtained from the FEC's public records. Such use is for a commercial purpose."
- 5 Id. at 3. Specifically, the proposed software at issue in Advisory Opinion 2004-24 appeared to
- 6 use FEC data to assist clients with soliciting contributions, but the requestor did not detail how
- 7 such data would actually be used.1
- The Commission recently addressed the use of FEC data in a more specific context. In
- 9 MUR 5625 (Aristotle), the Commission did not approve recommendations to find probable cause
- that Aristotle's Campaign Manager 5 software program violated 2 U.S.C. § 438(a)(4). The
- 11 Commissioners who declined to find probable cause that Aristotle violated the Act indicated that
- one reason for their vote was that they considered Aristotle's Campaign Manager 5 software
- program distinguishable from the software at issue in Advisory Opinion 2004-24. See MUR
- 14 5625, Statement of Reasons of Chairman Petersen and Commissioners Hunter and McGahn.
- 15 Distinguishing between the two programs, the Commissioners noted: "[T]his feature is the only
- software feature that provides access to any FEC data. And that access is limited to a restricted,
- 17 non-downloadable subset of data that can be accessed only with respect to individuals whose
- names and addresses are already a part of the end-user's pre-existing database." Id. at 5.
- 19 Additionally, the Statement of Reasons concluded that the Campaign Manager 5 software served
- as a compliance or vetting program, rather than a program that could be used to facilitate

The requestor proposed to "sort and organize [the downloaded] data, and match them into a client's database based on the client's needs... We seek guidance from the Commission as to whether we may include this individual contributor data under circumstances where we might reasonably expect them to be used to assist in soliciting contributions. We also seek guidance as to whether our own sale (or inclusion) of these data, regardless of their intended use, would be a prohibited commercial use." Advisory Opinion 2004-24, Request at 2.

- solicitations, because "[t]he feature only permits a committee to view how much someone
- 2 already in its database has given to other campaigns and committees." Id. at 9.
 - 1. Aristotle's Relationship Viewer Software is Distinguishable from the Campaign Manager 5 Software Considered in MUR 5625

The Relationship Viewer in this matter presents a much more far-reaching use of FEC data than the Campaign Manager 5 application addressed in MUR 5625. For example, while the contributor history feature of Campaign Manager 5 was the only software feature of Campaign Manager 5 that accessed any FEC data, the Aristotle 360 program appears to utilize FEC data in several ways. Not only does the Aristotle 360 program use the FEC contributor history in its Relationship Viewer application, but the 360 software accesses FEC data to help comply with the Lobbying Disclosure Act of 1995, MRSB Rule G-37, SEC Rule 206(4)-5, and state and local "pay-to-play" laws. See Response at 7. Moreover, the 360 software appears to provide "an individual's full detailed record" of contributions that is separate and apart from the Relationship Viewer. See Response at 24. Although Aristotle has not detailed exactly how it uses FEC data in each of the 360 software's applications, it is apparent from its response that the Relationship Viewer may not be the only software feature that accesses and utilizes FEC data.²

The 360 software package can also be distinguished from the Campaign Manager 5 program because the Relationship Viewer displays FEC contributor data, namely contribution histories, that appear as a search result. These contribution histories are not just limited to individuals that the committee manually enters into the search function. Aristotle has not explained precisely where all of the information associated with the search results is drawn from.

in its response, Aristotle states that the Relationship Viewer "only searches the FEC files for contribution information for individuals already in the committee's databases..." Response at 14. Even if Aristotle had obtained the information about individuals' contributions from a source that publishes the information pursuant to the exception under 11 C.F.R. § 104.15(c), such as www.opensecrets.org, the restrictions of 2 U.S.C. § 438(a)(4) "apply regardless of where the FEC report is displayed." Cf., Advisory Opinion 1988-02 (Chicago Board Options Exchange, Inc.) n.2.

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Although Aristotle has explained it does not draw the names of individuals from FEC data that

2 appear as search results, those individuals' federal contribution histories reflect information

derived from FEC reports.

In addition, whereas the Campaign Manager 5 only allowed committees to view how much an existing contributor had given to other campaigns, the Relationship Viewer allows a committee to view the contribution history of both the subject of the search and the individuals that appear as search results. Accessing contributor histories of a committee's own donors to resolicit those individuals appears to be permissible under 2 U.S.C. § 438(a)(4). See Advisory Opinion 2004-24 (NGP) at 3 n.1. The limited nature of the Campaign Manager 5 software may have only had the capacity to provide contribution histories of single individuals who had already donated to a campaign. The Relationship Viewer, on the other hand, appears to access individuals' contributor histories, even if the individuals do not already appear as contributors to that specific committee.

Finally, it is doubtful whether the Relationship Viewer could serve a bona fide compliance function. Because the Relationship Viewer appears to display the aggregate contribution amounts that individuals have given over multiple elections, the Relationship Viewer would not be able to assist committees in determining whether the individuals have already contributed the maximum amounts to those committees. Sae Response at 24. Moreover, the Relationship Viewer does not differentiate between the types of committees to which individuals make contributions. Because federal independent expenditure only committees accept contributions that do not count towards the individual biennial contribution limit, the aggregate contributions displayed by Relationship Viewer would not enable a committee to effectively alert an individual if he or she was approaching the biennial contribution limit.

2. Aristotle's Relationship Viewer Software Appears to Violate 2 U.S.C. § 438(a)(4)

Against this backdrop, Aristotle appears to have violated 2 U.S.C. § 438(a)(4) because it incorporated FEC data into a program that can be used to solicit contributions. Aristotle's webbased demonstration and power point slides clearly depict that the Relationship Viewer can be used to facilitate the solicitation of contributions. For example, once a name is searched, the Relationship Viewer accesses the relevant databases to display the "connection map." The Relationship Viewer program potentially could have accessed non-FEC databases to obtain information to display the names, addresses, occupations, and other relationship-based information. Federal contribution histories, however, must originate from FEC data.

Further, the federal contribution history is not just displayed for the one individual that the end-user searches for. Rather, the information is displayed for both the individual searched for and every individual who appears as a search result. Thus, the Relationship Viewer accesses FEC data in order to display the contribution histories of both the individual whose name is manually entered into the search function and the individuals whose names appear as a search result. The contribution histories displayed by the "connection map" contain information about the amount of the contributions that individuals have made to other federal committees, information that is obtained from FEC reports. These contribution histories, whether related to an individual who is the subject or the result of a Relationship Viewer search, provide committees with valuable information that it can use to solicit contributions.

Finally, the Relationship Viewer provides a list of "relationships" on the left-hand side of the screen, which corresponds to the "connection map" graphics. Although Aristotle has explained that this information cannot be "exported" to a spreadsheet or other format, nothing prevents end-users from using the contributor list displayed on the results page to solicit those

individuals. Indeed, a committee may be more likely to decide to solicit an individual because

his or her contribution history is immediately known.

In addition to having the FEC data displayed in a manner that facilitates soliciting contributions, Aristotle also has marketed the technology behind the Relationship Viewer as a solicitation tool. Aristotle claimed, in its web-based demonstration of Relationship Viewer that the program can be used to "target... dollars" and "access fat cats." See Complaint, Relationship Viewer Screenshot. Aristotle's press release announcing its patent application also has focused on the incorporation of "detailed state contributor and voter lists with highly accurate consumer databases to illuminate exactly how much a donor has given, how much they can give, and to suggest the maximum they might agree to contribute where allowed by law."

Complaint, Aristotle's Press Release. By focusing on how big of a contribution to ask for, Aristotle apparently intended its new technology to be used to aid in making solicitations. As Aristotle points out, the press release only mentions "state... contributor lists" when describing how the 360 technology can be used to solicit the maximum allowable contributions. Although Aristotle's press release focuses on the use of state contributor lists to help solicit maximum contributions, the Relationship Viewer uses the federal contribution histories for the very same purpose, even if Aristotle does not explicitly highlight this use in its press release.

Further, the Relationship Viewer also utilizes FEC data for more general "commercial purposes" The Commission has concluded that using information obtained from FEC reports to enhance the contributor information already in the possession of a group or organization would prohibit 2 U.S.C. § 438(a)(4). See Advisory Opinion 1985-16 (Weiss). For example, the requestor in Advisory Opinion 1985-16 sought to "search reports filed by political committees with the Commission to compare the names on [its] list with those individuals who have actually

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contributed to Federal election campaigns . . . [although] no new names or other information would be added to [the] list from Commission records." Advisory Opinion 1985-16 (Weiss) 2 at 1. Despite the fact that the only information that was obtained from Commission records was 3 whether an individual had previously contributed to a federal political committee, the Commission concluded that "the use of information gained from examining reports filed with the 5 Commission would allow [the requestor] to purge the non-contributors from [the] list or to 6 otherwise Identify the contributors on [the] list. [The] list would have special commercial; value 7 because it had been produced as a result of cross verification with contributor information contained in reports filed with the Commission." Advisory Opinion 1985-16 (Weiss) at 2, 9 10 Like the requestor in Advisory Opinion 1985-16, Aristotle's use of contributor information to enhance the contributor lists in the committees' databases violates 2 U.S.C. 11 § 438(a)(4). Through the 360 program and Relationship Viewer application, Aristotle not only - 12 enables committees to collect information about whether individuals have contributed to federal 13 campaigns, Aristotle also enables committees to collect information about the amount and 14 recipient of each individual's contributions. The fact that Aristotle sells the technology that 15 allows committees to enhance their contributor and prospective-contributor lists, and does not 16 sell the enhanced contributor list itself, does not change the fact that Aristotle is using FEC data 17 for commercial purposes. Indeed, the Relationship Viewer's ability to instantly enhance a 18 committee's pre-existing list appears to be at least as commercially valuable as providing a list of 19 individuals who have contributed to federal campaigns, as was the case in Advisory Opinion 20 1985-16. 21

Finally, even if the Relationship Viewer is not the most utilized feature of the Aristotle 360 software program, Aristotle itself boasts that the 360 software program is "the most

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- 1 powerful political data mining tool and campaign software." Complaint, Aristotle Press Release.
- 2 By using the advanced technology of the Relationship Viewer to market the complete 360
- 3 software package as the most technologically advanced, Aristotle has utilized Commission data
- 4 for its general commercial purposes. Without incorporating FEC data into the Relationship
- 5 Viewer, Aristotle would not be able to make the same extensive claims about its data-mining
- 6 capabilities in its advertisements and press releases.³
- Accordingly, we recommond that the Commission find reason to believe that Aristotle
- 8 International, Inc. violated 2 U.S.C. § 438(a)(4).4

III. PROPOSED INVESTIGATION

We plan a targeted investigation that will request documents relating to the development, marketing and sales of the 360 software program at issue. The development and marketing information will provide evidence regarding whether Aristotle developed the software to help facilitate solicitations and whether Aristotle intended its customers to use the program to solicit donors. We may also conduct limited interviews with individuals who use the Relationship Viewer application within the larger 360 software to determine whether those campaigns have used the software to solicit contributions and the scope of the activity. Therefore, we

Even though Aristotle provides an individual's contribution history for free on its website, it does not appear to provide this information in the same format that it is displayed in the Relationship Viewer, i.e. in a fully integrated format. Providing federal contributor histories is not a commercial use in and of itself. In fact, such contribution histories are readily available on the website of the Commission and many other non-profit organizations. Providing federal contribution history in a format useful for soliciting contributions, contacting potential supporters, or increasing a committee's number of volunteers is, however, for a commercial purpose.

Although Aristotle's comments on the Draft Advisory Opinion in AO 2004-24 and references to that opinion in its marketing material demonstrate that Aristotle knew of 2 U.S.C. § 438(a)(4)'s prohibitions, we do not have enough information at this point to recommend that the violation in connection with Aristotle 360 was knowing and willful. See AFL-CIO v. FEC, 628 F.2d 97, 98, 101-02 (D.C. Cir.), cert. denied, 449 U.S. 982 (1980) (noting that a "willful" violation includes "such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act," but concluding on the facts before it that this standard was not met) (cited in National Right to Work Comm. v. FEC, 716 F.2d 1401, 1403 (D.C. Cir. 1983)). Aristotle has repeatedly asserted that it considered itself to be in compliance with 2 U.S.C. § 438(a)(4), a factor that would weigh against a knowing and willful violation. See id. at 191. However, if the proposed investigation uneovers information suggesting that Aristotle knowingly and willfully violated the Act, we will make additional recommendations to the Commission at the appropriate time.

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- recommend that the Commission authorize compulsory process in this matter, including the
- 2 issuance of interrogatories, document subpoenas, deposition subpoenas and orders.

IV. <u>RECOMMENDATIONS</u>

- 1. Find reason to believe that Aristotle International, Inc. violated 2 U.S.C. § 438(a)(4).
- 2. Approve the attached Factual and Legal Analysis.
- 3. Authorize the use of compulsory process in this matter, including the issuance of interrogatories, document subpoenas, deposition subpoenas and orders.
- 4. Approve the appropriate letters.

	Actual Contract			
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Date

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